

2SHB 1405 - S AMD 315

By Senators Hobbs, Benton, Rockefeller

ADOPTED 04/09/2011

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 31.04.025 and 2009 c 311 s 1 and 2009 c 120 s 3 are
4 each reenacted and amended to read as follows:

5 (1) Each loan made to a resident of this state by a licensee, or
6 persons subject to this chapter, is subject to the authority and
7 restrictions of this chapter, unless such loan is made under the
8 authority of chapter 63.14 RCW.

9 (2) This chapter does not apply to the following:

10 (a) Any person doing business under, and as permitted by, any law
11 of this state or of the United States relating to banks, savings banks,
12 trust companies, savings and loan or building and loan associations, or
13 credit unions;

14 (b) Entities making loans under chapter 19.60 RCW (pawnbroking);

15 (c) Entities making loans under chapter 63.14 RCW (retail
16 installment sales of goods and services);

17 (d) Entities making loans under chapter 31.45 RCW (check cashers
18 and sellers);

19 (e) Any person making (~~loans~~) a loan primarily for business,
20 commercial, or agricultural purposes (~~or~~) unless the loan is secured
21 by a lien on the borrower's primary residence;

22 (f) Any person making loans made to government or government
23 agencies or instrumentalities (~~or~~) or making loans to organizations as
24 defined in the federal truth in lending act;

25 (~~(f)~~) (g) Entities making loans under chapter 43.185 RCW (housing
26 trust fund);

27 (~~(g)~~) (h) Entities making loans under programs of the United
28 States department of agriculture, department of housing and urban
29 development, or other federal government program that provides funding

1 or access to funding for single-family housing developments or grants
2 to low-income individuals for the purchase or repair of single-family
3 housing; (~~and~~

4 ~~(h))~~ (i) Nonprofit housing organizations making loans, or loans
5 made, under housing programs that are funded in whole or in part by
6 federal or state programs if the primary purpose of the programs is to
7 assist low-income borrowers with purchasing or repairing housing or the
8 development of housing for low-income Washington state residents; and

9 (j) Entities making loans which are not residential mortgage loans
10 under a credit card plan.

11 (3) The director may, at his or her discretion, waive applicability
12 of the consumer loan company licensing provisions of this chapter to
13 other persons, not including individuals subject to the S.A.F.E. act,
14 making or servicing loans when the director determines it necessary to
15 facilitate commerce and protect consumers. The director may adopt
16 rules interpreting this section.

17 **Sec. 2.** RCW 31.04.027 and 2001 c 81 s 3 are each amended to read
18 as follows:

19 It is a violation of this chapter for a licensee, its officers,
20 directors, employees, or independent contractors, or any other person
21 subject to this chapter to:

22 (1) Directly or indirectly employ any scheme, device, or artifice
23 to defraud or mislead any borrower, to defraud or mislead any lender,
24 or to defraud or mislead any person;

25 (2) Directly or indirectly engage in any unfair or deceptive
26 practice toward any person;

27 (3) Directly or indirectly obtain property by fraud or
28 misrepresentation;

29 (4) Solicit or enter into a contract with a borrower that provides
30 in substance that the consumer loan company may earn a fee or
31 commission through the consumer loan company's best efforts to obtain
32 a loan even though no loan is actually obtained for the borrower;

33 (5) Solicit, advertise, or enter into a contract for specific
34 interest rates, points, or other financing terms unless the terms are
35 actually available at the time of soliciting, advertising, or
36 contracting;

1 (6) Fail to make disclosures to loan applicants as required by RCW
2 31.04.102 and any other applicable state or federal law;

3 (7) Make, in any manner, any false or deceptive statement or
4 representation with regard to the rates, points, or other financing
5 terms or conditions for a residential mortgage loan or engage in bait
6 and switch advertising;

7 (8) Negligently make any false statement or knowingly and willfully
8 make any omission of material fact in connection with any reports filed
9 with the department by a licensee or in connection with any
10 investigation conducted by the department;

11 (9) Make any payment, directly or indirectly, to any appraiser of
12 a property, for the purposes of influencing the independent judgment of
13 the appraiser with respect to the value of the property; ((or))

14 (10) Accept from any borrower at or near the time a loan is made
15 and in advance of any default an execution of, or induce any borrower
16 to execute, any instrument of conveyance, not including a mortgage or
17 deed of trust, to the lender of any ownership interest in the
18 borrower's primary residence that is the security for the borrower's
19 loan;

20 (11) Obtain at the time of closing a release of future damages for
21 usury or other damages or penalties provided by law or a waiver of the
22 provisions of this chapter; or

23 (12) Advertise any rate of interest without conspicuously
24 disclosing the annual percentage rate implied by that rate of interest
25 or otherwise fail to comply with any requirement of the truth in
26 lending act, 15 U.S.C. Sec. 1601 and regulation Z, 12 C.F.R. Sec. 226,
27 the real estate settlement procedures act, 12 U.S.C. Sec. 2601 and
28 regulation X, 24 C.F.R. Sec. 3500, or the equal credit opportunity act,
29 15 U.S.C. Sec. 1691 and regulation B, Sec. 202.9, 202.11, and 202.12,
30 or any other applicable federal statute, as now or hereafter amended,
31 in any advertising of residential mortgage loans or any other consumer
32 loan company activity."

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1 On page 1, line 1 of the title, after "act;" strike the remainder
2 of the title and insert "amending RCW 31.04.027; and reenacting and
3 amending RCW 31.04.025."

EFFECT: Clarifies that a consumer loan act licensee may not accept from the borrower any conveyance of an ownership interest, not including mortgages or deeds of trust, in the borrower's primary residence when the loan is made and in advance of default.

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